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Appeal
Brief
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Brief in support of Appeal for
application 10/083/771 filed on
2/27/2002 by Huey Thomas Crochet
Inventor - Huey Thomas Crochet
Examiner - Kurt Rowan
Art Unit- 3643

1. Real Party of Interest

The applicant is the sole inventor and only interested party for this appeal

2. Related Appeals and Interferences

There are no other appeals or interferences.

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3. Status of Claims

Claims 6, 7, and 8 were rejected and cancelled to be substituted by claims 9-10 along with a request for the examiner to write claims for the applicant. Claims 9-10 resulted in final rejection.

4. Status of Amendments

One post-final action amendment was rejected by the examiner, however such was not intended to be an amendment and was only an attempt to persuade the examiner to reconsider. The applicant sent no request to amend with said argument and only realized that such had been

recorded as an amendment on July 17, 03 after talking to Mr. Gregg Fienberg of the appeals office.

5. Summary of Invention

The applicants fishing weight is designed to perform as a static weight that provides snag resistant performance while being retrieved which allows for fast steady retrieves through stump and brush laden areas on a horizontal plane or operation.

6. Issues

The applicant submits that the examiner has misperceive the structure and operation of Adams in both the first and final office actions and that the applicants own structure is supported by the specification and original disclosure, as well as spin means, and that Adams present invention and alternates are invalid as a point of reference regarding prior art against the applicants invention.

7. Grouping of Claims

The applicant submits that a misperception by the examiner as to the structure and operation of said examiners main point of reference against said applicant would have influenced the examiners determinations regarding 35 U.S.C. 103 and 112 and whether or not the examiner would have written claims for the applicant as requested.

The applicant further submits that such claims and the applicants request for assistance can be accurately assessed, only, after the applicant has put forth his argument in section eight regarding misperception however claims 6, 7, 8, 9, and 10 are in the appendix as a point of reference.

The applicant does not argue that his claims are technically correct but does argue in support of his structure and spin means.

8. Arguments

(a) The applicant submits that the examiners citation of 35 U.S.C. 112 first paragraph, in the final office action only, effectively denied said applicant the opportunity to argue in support of his structure short of going to appeal.

The applicant contends that the cylindrical structure of his invention is supported in the original disclosure in claim 6 as is the spin means wherein said claim 6 epitomizes the first definition for the word cylinder in the websters college dictionary page 202 copyright 1997 by Random House, inc., and that said claim 6 also describes that the angle has a rounded surface and is the means by which said angle slips to one side upon impact with obstacles.

The applicants operation of invention section, paragraph 2, again states that the face of the angled portion is rounded and the applicants description of invention section states that the prototype for the applicants fishing weight was made from a smooth 6 inch nail and that a bend was made to form the angled portion. (Rejection of 9-10 found on p.8 final O.A.)

No rounding off was stated to have been done along the length of the nail, and the applicant submits that it is unreasonable to contend that only that part of the nail allotted to the angled portion, was round before the bend was made.

The applicant contends that the body of his weight is round and elongated and can properly be described as cylindrical according to the description of said body in claim 6 of the original disclosure.

(b) Regarding 35 U.S.C. 112, second paragraph, the applicant submits his own operation of invention section, paragraphs 2 and 3, wherein the role of the angled portion is clearly defined.

The examiner states that the spin means is confusing, in the citation regarding 35 U.S.C. 112, second paragraph (page 9 of the final office action) however in lines 2-6 of said examiners

response to arguments in the final office action the examiner clearly attributes the applicants mode of operation to the all metal fig. 13 alternate of Adams stating that Adams shows the same basic geometry as the applicants present invention and hence will perform in the same manner.

The applicant disagrees with the examiner as to both structure and operation. The structure of the applicants weight is shown in his drawing fig. 1 and defines a long straight lower portion and a shorter straight angled portion whereas Adams drawing on sheet 1 shows figs. 1 and 2 as being curved and figs 4 and 5 defining that they are also round. One fig. Shown on sheet 4 depicts fig. 13 as being the same in angles of curvature as Adams figs. 1 and 2 and is stated to have the exact same angles of curvature and dimensions as Adams present invention on p. 6 of Adams lines 61-67 and page 7 lines 1-6.

The applicant contends that since Adams fig. 13 is curved and round it cannot perform in the same manner as the applicants own weight as described in paragraphs 2 and 3 of said applicants operation of invention section because in order to present an oblique angle to an obstacle for initiating a spin upon impact with said obstacle fig. 13 would have to be dragged across, the uneven terrain of, the bottom balanced on the back of the curve with both ends pointed upward.

The applicant submits that the round and curved length of the body of fig. 13 could not keep both ends up during retrieve and would only topple over on its side to be dragged across the bottom with no snag resistant capability past those of ordinary static weights of the prior art. If fig. 13 could be made to land on the bottom with both ends up it still could not maintain such condition, during retrieve, as pressure from the line to the eyelet would cause the eyelet portion of the weight to try to roll forward along the curve in an attempt to align with the force and direction of the line. This would cause the rearward portion to rise farther upward in a kind of scorpions tail effect causing even more instability and would again fall over to one side to be dragged along in a non - snag resistant condition.

The applicant submits that his own drawing fig. 1 supports that the applicants weight has no such rearward instability. When force is applied to the line the longer heavier portion remains prone on the bottom and rolls laterally to accommodate the rising lighter, substantially shorter, angled portion until such time as the angled portion achieves an obliquely upright condition whereupon further force from the line will move the heavier longer portion across the bottom

behind said angled portion and in line with the force and direction of the line. Upon achieving such orientation the longer portion becomes the lower portion and the over all condition of the weight allows for the mode of operation as described by the applicants operation of invention section in paragraphs 2 and 3.

(c) The applicant submits that Adams teaches against spinning at every mention of such in his specification and makes no exceptions for alternates.

In fact Adams states that the angles of curvature applied to his weights are part of the reason his weights do not spin (Adams p.4 lines 28-62) and that if angle A is to large the weight is adversely affected and can result in flopping or tumbling of the weight during casting and diminished control of the weight as it is dragged along the lake or river bottom. Adams further states that if the angle A is to small the sinker is more prone to snagging and tends to spin or twist as it is being dragged across the bottom.

Further teachings against spinning by Adams are found on p.1 line 55 page 2 lines 21-23 p.4 lines 34-35 p.4 lines 60-62.

(d) The applicant submits that prior art is the criteria for ascertaining whether or not an invention is valid and that prior art must be described in writing previous to application by other inventors.

The applicant further submits that Adams, for reasons known only to himself, does not describe a mode of operation for fig. 13. (Adams p. 6 lines 61-67 and p. 7 lines 1-6)

The applicant also submits that Adams does not describe or show the applicants structure or operation and that for the examiner to attribute the applicants mode of operation to fig. 13, post patent, is the equivalent of writing prior art for Adams during the applicants examination.

The applicant submits that such is improper and that if the examiners argument in lines 2-6 of his final response is allowed to stand, Adams will have been given a two for one patent by said examiner which Adams did not apply for nor was granted.

The applicant contends that fig. 13 violates the spirit or essence of the Adams present invention.

Adams tacitly admits on p.6 lines 61-67 that fig. 13 will not operate in the manner described for his present invention by his statements that fig. 13 will realize many of the benefits of his present invention.

Adams does not state what such benefits are or how they would effect operation or what such operation is.

The applicant submits that Adams seeks to widen the scope of his invention by implying snag resistance through association with similar shaped weights of radically different static composition and that while he does not describe an operation for fig. 13 it is clear that such radical difference of internal composition will cause a radically different mode of operation which Adams (Through his lack of description) has tacitly denied any responsibility for.

The applicant submits that such implication by Adams cannot be relied upon as Prior art because of radically different static composition and that clearly fig. 13 cannot achieve the vertical orientation in the water described by Adams on page 5 lines 52-63.

Since Adams has tacitly admitted that fig. 13 will not operate in the manner described for the Adams present invention and because the laws of physics dictates that such must be the case, the applicant contends that fig. 13 is not a proper alternate for Adams.

The applicant submits that Adams did not describe a mode of operation for fig. 13 and that any attempt at such would have constituted a two for one patent which Adams did not apply for.

The applicant further submits that the examiners misperception of fig. 13 is based solely outward appearances of fig.13, relative to other Adams weights, without proper consideration for the completely static internal composition of said fig. 13 and the dynamics of such with regard to the laws of physics.

The applicant further submits that prior art must be existing and that no such exists for fig. 13, either in form or operation, which would invalidate the applicants invention and that the examiner cannot write prior art for Adams post - patent.

(e) The applicant contends that in the examiners final response to arguments, in lines 2-6 said examiner has overlooked that the applicants weight serves functions beyond snag resistance.

Such other functions are static performance sufficient to meet the requirements of the tight line method of fishing as stated in the first paragraph of the applicants operation of invention section and fast steady retrieves in a snag resistant manner on a horizontal plane of operation as stated adjacent the letter C of the applicants objects and advantages section.

(f) Lines 7-11 of the examiners final response states that the applicant has not shown why Adams will not operate to perform the tight line method of fishing since force from the line would result in the weight being in a vertical orientation and that the examiner believes that the static performance of Adams in such condition would be the same as the applicants present invention. Since fig. 13 can not achieve a vertical orientation the applicant can only assume that the examiner is referring to Adams' present invention

The applicant disagrees with the examiners statements and notes that in the third paragraph of the applicants remarks of the first office action said applicant relies on Adams p.5 lines 55-60.

Adams states therein that the existence of the buoyant portion relative to the weighted portion provides a lift to the sinker body when encountering an obstacle and that while the buoyant portion is not sufficient to provide a generally vertical orientation when placed in water it is sufficient to provide an upward or lifting force to the top part of the sinker when placed in water and that when pulled or jerked the sinker is lifted upwardly and forwardly by the fishing line.

Since the examiner is not convinced by such statement by Adams the applicant will attempt to further explain the implications of such statements through further statements by Adams.

Such other statements are Adams p.5 lines 25-29 p.2 lines 7-12 p.2 lines 18-23 p.3 lines 52-57 wherein the body portion is extended up and off of the bottom while in the vertical orientation and p.6 lines 12-18.

The applicant submits that the above references to Adams supports that Adams is not

designed to perform a static function whereby the weight must maintain a stationary placement on the bottom while force is applied to the line as described by the tight line method of fishing.

The above arguments and references applies to the Adams present invention as Adams fig. 13 has no flotation and cannot achieve the vertical orientation as described by Adams on p.5 lines 55-60.

The applicant further submits that while fig. 13 can achieve the static function of the tight line method of fishing it can not do so in a snag resistant manner.

Further indication that Adams is non-stationary are that Adams refers to his weights as being in use while providing a desired wobble to the bait or trailing snell. Adams p.1 lines 9-16 p.1 lines 51-57 p.4 lines 32-36.

(g) The applicant submits that Adams, of necessity, employs a substantially slow mode of operation to allow time for the method by which the vertical mode of snag resistance is accomplished whereby the weight lifts, pivots, and rights itself as it wiggles through over, and around snags (Adams p.2 lines 18-21) and because part of the operation as described by Adams is to provide the angler with a better feel or sensitivity for the bottom by maintaining contact with the bottom while moving vertically across the bottom on the distal end of the wire extending from the free end of the weight which holds the body of the weight up and off of the bottom. P.3 lines 50-57 p.2 lines 7-12.

The applicant submits that to accomplish such Adams must maintain contact with the bottom while wiggling through, over, and around snags and only leaves the bottom when being pulled or jerked over obstacles to large to wiggle around or through. Adams p.5 lines 52-67 p.3 lines 50-55 p.2 lines 7-12 p.4 lines 63-67.

(h) In the last two lines of the examiners final response the examiner states that the applicant argues that Adams uses multiple parts, however the record will show that the applicant argued that paragraphs 2 and 3 of the Adams prior art section states that multiple parts are a snag hazard

and that Adams is unitary. Such is found in the applicants letter to examiner adjacent the paragraph numbered 2.

The applicant submits that Adams is unitary and states such on p.1 lines 51-57 p.6 lines 36-37 and p.8 claim 1.

(i) The examiner states Grimes as prior art not relied upon, however the applicant submits that Grimes is not a fishing weight and not snag resistant and since Adams claims to be unitary (Adams p.8 claim 1) the applicant submits that Grimes is remote relative to the applicants invention and that the examiners application of such against said applicant is acute.

(j) The applicant submits that because Adams does not show or describe the applicants structure or operation and because the present invention of Adams can not perform the tight line method of fishing and because the fig. 13 of Adams is not snag resistant and because the fig. 13 violates the spirit of the Adams present invention and because the applicants weight has functions beyond snag resistance and because Adams is unitary and because the specifications of Adams and the applicant supports all of the above, said applicant respectfully requests reconsideration of his petition for patent.

Signed Huey Thomas Crochet

9. Appendix

- (a) Claims 6 7 8 9 10 by applicant
- (b) Claims rejected by examiner p. 9, 10, and 11 of first O.A. and p. 8-13 of final O.A.

- (c) Drawing fig. 1 and Description of Drawing
- (d) Examiners final Response
- (e) Applicants response of first O.A. including letter to examiner and remarks.
- (f) Applicants Objects and Advantages
- (g) Applicants Abstract
- (h) Request for amendment of type-o-s for claims 9 and 10 and such amendments.
- (I) Request for claims substitution and request for examiner to write claims of first O.A.

Claims for
Dynamic, snag resistant fishing weight

Filed 2/27/2002

6. I claim a dynamic, snag resistant fishing weight having a specific mode of operation comprising,
- [a] a round metal weight 6 inches long and 1/4 inch in diameter having both ends rounded to
 - [b] a hemisphere head with
 - [c] a hole 1/8 inch wide drilled through said weight near the tip of one said hemisphere head leaving 1/16 of an inch of said metal between the edge of said hole and said tip of said hemisphere head which is 1, 1/2 inches from
 - [d] a bend forming a sharp 40 degree angle having a rounded surface and being the means by which said angle slips to one side upon impact with obstacles initiating a spin causing the longer, lower portion of said weight to rise at a right angle to the length of said weight, swinging in a bottom upward movement to the level of line attachment to said weight which is the said level of clearance over said obstacles, said impact most often resulting in a

complete 360 degree said spin.

7. The weight of claim 6 c wherein there is a hole 1/8 inch wide drilled through said weight near the tip of one said hemisphere head leaving 1/16 inch of metal between the edge of said hole and said tip of said hemisphere head said hole is attached through by an o ring and said o ring is interlinked to a swivel.
8. the weight of claim 7 wherein there is 1/16 of an inch of metal between the edge of said hole and the tip of said hemisphere head said metal is the same said metal used to make smooth round 6 inch nails..

CLAIMS FOR PATENT APPLICATION 10/083/771
FILED 2/27/2002 ARTICLE 3643
INVENTOR HUEY THOMAS CROCHET

9. I claim a fishing weight comprising,

A smooth, solid, elongated, cylindrical body made of dense, static material that is about 24 times longer than wide and rounded [of] off at both ends to shape protuberance free hemisphere heads with a bend along said cylindrical body that defines a longer straight portion and a substantially shorter angled portion with a hole residing near the end of said angled portion for attachment through by a key-ring type o-ring, which is attached through by a swivel and the length of said angled portion forming a smoothly rounded, obliquely inclined, spin means whereby impact, through collision with obstacles while being retrieved, causes said angled portion to slip to one side initiating said spin by said weight thereby allowing the tight-line method of fishing to be practiced in stump and brush-laden areas through fast, steady, snag-resistant retrieves on a horizontal plane of operation after first performing the required static functions of said tight-line method.

CLAIMS FOR PATENT APPLICATION 10/083/771
FILED 2/27/2002 ARTICLE 3643
INVENTOR HUEY THOMAS CROCHET

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CLAIMS FOR PATENT APPLICATION 10/083/771
FILED 2/27/2002 ARTICLE 3643
INVENTOR HUEY THOMAS CROCHET

10. I claim a fishing weight comprising,

A smooth, solid, elongated, cylindrical body made of dense, static material that is about 24 times longer than wide and fashioned at both ends to be completely rounded hemisphere heads with a [end] bend along said cylindrical body, which defines a longer straight portion and a substantially shorter, angled portion with a hole and means for attaching through by appropriately designed line attachment apparatus near the end of said angled portion and the length of said angled portion forming a smoothly rounded, oblique incline for causing said angle to slip to one side upon impact with obstacles while being retrieved, initiating a snag-resistant maneuver by said weight which allows for fast steady retrieves on a horizontal plane of operation while practicing the tight-line method of fishing in and around stump and brush-laden areas.

CLAIMS FOR PATENT APPLICATION 10/083/771
FILED 2/27/2002 ARTICLE 3643
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10. I claim a fishing weight comprising,

A smooth, solid, elongated, cylindrical body made of dense, static material that is about 24 times longer than wide and fashioned at both ends to be completely rounded hemisphere heads with a bend along said cylindrical body, which defines a longer straight portion and a substantially shorter, angled portion with a hole and means for attaching through by appropriately designed line attachment apparatus near the end of said angled portion and the length of said angled portion forming a smoothly rounded, oblique incline for causing said angle to slip to one side upon impact with obstacles while being retrieved, initiating a snag-resistant maneuver by said weight which allows for fast steady retrieves on a horizontal plane of operation while practicing the tight-line method of fishing in and around stump and brush-laden areas.

Art Unit: 3643

Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. "...The means by which said angle slips to one side upon impact..." is confusing. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

9. Claim 6 recites the limitation "the tip" in line 6. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 6 recites the limitation "the level of clearance" in lines 13-14. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3643

Claim Rejections - 35 U.S.C. § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Bennett.

The patents to Adams and Bennet show fishing weights. Adams shows a round metal weight such as in Fig. 13 having an eyelet 16 with hemispherical heads and a bend. Adams does not show the eyelet as a hole drilled through the weight. The patent to Bennet shows a weight 48 with an hole 46 near the tip of the weight. In reference to claim 6, it would have been obvious to

Art Unit: 3643

provide Adams with a hole as shown by Bennett since merely one mechanically equivalent attaching means is being substituted for another and the function is the same. As to the size of the weight, the size of the hole, the angle of the bend; these elements or parameters would be determined by routine experimentation since no showing of criticality was made as to the exact dimensions recited. See *In re Rose*, 105 USPQ 137 and *In re Aller et al.*, 105 USPQ 233.

14. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Bennett as applied to claim 6 above, and further in view of Stephenson.

The patents to Adams et al. and Bennett show fishing weights and have been discussed above. The patent to Stephenson shows, in Fig. 2, a fishing weight 32 mounted on a shaft 48 having o-rings 42, 46 at each end. O-ring 42 is attached to a swivel (not labeled but shown as 22 in Fig. 1) in reference to claim 7, it would have been obvious to provide the weight of Adams as modified by Bennett with a swivel for the purpose of preventing line twists. In reference to claim 8, Adams does not disclose that the sinker is made from the same material used to make smooth round 6 inch nails, but does disclose lead, lead alloys, and alloys of antimony/lead. At any rate, it would have been obvious to make the sinker out the same material used to make 6 inch nails since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416.

Art Unit: 3643

under 37 CFR 1.27(f) and make an assertion of entitlement to small entity status in the manner set forth in 37 CFR 1.27(c)(1) or 37 CFR 1.27(c)(3). Accordingly, if applicant meets the requirements of 37 CFR 1.27(a), applicant must submit a written assertion of entitlement to small entity status under 37 CFR 1.27© before fees can be paid in the small entity amount. See 37 CFR 1.27(d). The assertion must be signed, clearly identifiable, and convey the concept of entitlement to small entity status. See 37 CFR 1.27(c)(1). No particular form is required.

Claim Rejections - 35 U.S.C. § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 9-10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification does not support the body is cylindrical. Also, the spin means is not support in the original disclosure.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

Art Unit: 3643

the invention. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. "...The means by which said angle slips to one side upon impact..." is confusing. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

9. Claim 9 recites the limitation "the end" in line 6. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 9 recites the limitation "the length" in line 7. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 9 recites the limitation "said spin" in line 10. There is insufficient antecedent basis for this limitation in the claim. It is not clear if "said spin" relates to "spin means" or not

12. Claim 9 recites the limitation "the tight line method of fishing" in line 11. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 10 recites the limitation "the end" in line 7. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 10 recites the limitation "the length" in line 7. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 10 recites the limitation "said angle" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3643

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16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

18. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Bennett.

The patents to Adams and Bennet show fishing weights. Adams shows a round metal weight such as in Fig. 13 having an eyelet 16 with hemispherical heads and a bend. Adams does not show the eyelet as a hole drilled through the weight. The patent to Bennet shows a weight 48 with an hole 46 near the tip of the weight. In reference to claim 10, it would have been obvious

Art Unit: 3643

to provide Adams with a hole as shown by Bennett since merely one mechanically equivalent attaching means is being substituted for another and the function is the same. As to the size of the weight, the size of the hole, the angle of the bend and the body being 24 times longer than wide; these elements or parameters would be determined by routine experimentation since no showing of criticality was made as to the exact dimensions recited. See In re Rose, 105 USPQ 137 and In re Aller et al., 105 USPQ 233.

19. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Bennett as applied to claim 6 above, and further in view of Stephenson. The patents to Adams et al. and Bennett show fishing weights and have been discussed above. The patent to Stephenson shows, in Fig. 2, a fishing weight 32 mounted on a shaft 48 having o-rings 42, 46 at each end. O-ring 42 is attached to a swivel (not labeled but shown as 22 in Fig. 1) in reference to claim 9, it would have been obvious to provide the weight of Adams as modified by Bennett with a swivel for the purpose of preventing line twists. As to the body being 24 times longer than wide, it would have been obvious to employ routine experimentation to determine the optimum size of the body. See In re Rose, 105 USPQ 137, In re Aller et al., 105 USPQ 233 and In re Dailey et al., 149 USPQ 47.

Art Unit: 3643

Response to Arguments

20. Applicant's arguments filed Jan. 31, 2003 have been fully considered but they are not persuasive. Applicant argues that Adams teaches away from spinning, but this is not the case since the weight of Adams functions in the same manner as the present invention which is to be a snag free sinker. Whether or not a weight spins or turns in the water would depend on the size, weight, geometry, the obstacles in the water and the method of fishing. Adams shows the same basic structure as the present invention and hence, would function in the same manner during use. Applicant has not shown why Adams would not function in what is referred to as the "tight line method". As to the orientation of Adams in the water, clearly, this would depend on the method of fishing being employed since "tight line" fishing would result in the weight being in a vertical orientation in the water due to the upward force on the line from rod. Hence, the static performance would be the same as the present invention. Whether or not, there is redundancy in the design of Adams is material to patentability since the prior art must show the structure recited noting that applicant has used the open-ended term "comprising". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., curvature and angle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues Adams uses multiple parts but so does the present invention so the invention is not unitary.

Art Unit: 3643

In response to applicant's argument that Grimes is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Grimes is both in applicant's field of endeavor and also reasonably pertinent to the particular problem with which applicant is concerned.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Description of Drawing

- (a) The number 1 of figure 1 shows a swivel that is part of the means of line attachment to the weight.
- (b) The number 2 of figure 1 shows an o-ring that is part of the means of line attachment between the weight and swivel.
- (c) The number 3 of figure 1 shows a hole through the weight near the tip of the angled end where the o-ring is to be attached.
- (d) the numbers 4 and 5 of figure 1 show the smooth and rounded shape of the hemisphere heads of the all-metal structure of the weight.
- (e) The number 6 of figure 1 shows a left side view of the angled end of the weight, which has a smooth, rounded surface.
- (f) The number 7 of figure 1 shows that the longer part of the weight is lower than the angled end.
- (g) The number 8 of figure 1 shows that place along the body of the weight where a bend is made to form the angled end.
- (h) The number 9 of figure 1 indicates that the structure of the weight is complete.

Drawing For DYNAMIC SNAG
RESISTANT FISHING WEIGHT
INVENTOR Huey Thomas CROCHET

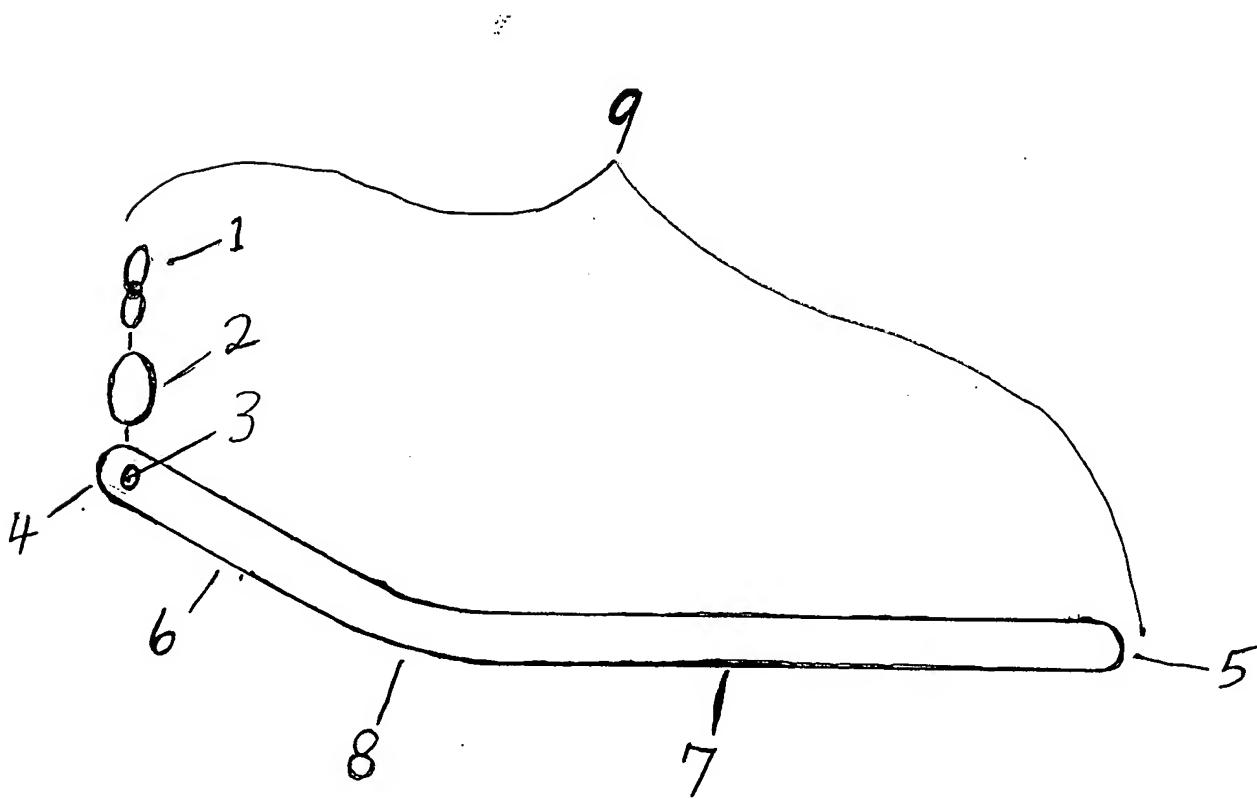


Fig. 1

Art Unit: 3643

Response to Arguments

20. Applicant's arguments filed Jan. 31, 2003 have been fully considered but they are not persuasive. Applicant argues that Adams teaches away from spinning, but this is not the case since the weight of Adams functions in the same manner as the present invention which is to be a snag free sinker. Whether or not a weight spins or turns in the water would depend on the size, weight, geometry, the obstacles in the water and the method of fishing. Adams shows the same basic structure as the present invention and hence, would function in the same manner during use. Applicant has not shown why Adams would not function in what is referred to as the "tight line method". As to the orientation of Adams in the water, clearly, this would depend on the method of fishing being employed since "tight line" fishing would result in the weight being in a vertical orientation in the water due to the upward force on the line from rod. Hence, the static performance would be the same as the present invention. Whether or not, there is redundancy in the design of Adams is material to patentability since the prior art must show the structure recited noting that applicant has used the open-ended term "comprising". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., curvature and angle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues Adams uses multiple parts but so does the present invention so the invention is not unitary.

Response to Office Action mailed November 4, 2002
for Patent #10/083/771 Inventor Huey Thomas Crochet

Kurt Rowan, Examiner
Art Unit 3643 regarding application 10/083/771
Filed 2/27/2002 by Huey Thomas Crochet

The applicant responds to examiners citations as follows,

1. Citation - the means by which said angle slips to one side is confusing.

Applicant's response - claims 6-8 are requested to be cancelled and substituted by 9 and 10 wherein said angle is defined as a smoothly rounded, obliquely inclined spin means whereby impact through collision with obstacles while being retrieved causes said angle to slip to one side initiating said spin by said weight.

2. Citation - the limitation "the tip" in line 6 of claim 6 has insufficient antecedent basis.

Applicant's response - the description of invention section reads as follows,

Lay the weight on its side and drill a 1/8-inch hole so that 1/16 of an inch of metal is between the hole and the "tip" of the 1 1/2 inch angled end.

3. Citation - the limitation "the level of clearance" in lines 13-14 has insufficient antecedent basis.

Applicant's response - the operation of invention section wherein the level of clearance is the level of line attachment.

4. Citation - claim 6 is rejected as being unpatentable over Adams in view of Bennet as merely replacing one means of line attachment for an equivalent means and the function remains the same.

Applicant's response - the applicant submits that the weight of the office acting has a hole to allow the protuberance free surface of the hemisphere head to have maximum exposure to obstacles for the best chance of

responding to intense applied force to the line through slippage in actual snag situations, which is further explained in Citation 5.

5. Citation - Adams in view of Bennet and further in view of Stephenson, which has a fishing weight mounted on a shaft having o-rings at each end and a swivel attached at one end.

Applicant's response - the applicant submits that the o-ring of the office action is not peripherally attached to anything, and if desired could be turned around the periphery through the hole to complete 360 degrees.

The applicant further submits that the o-ring of the office action fits loosely through the hole and has the ability to be pulled across the end of the hemisphere head either forward or back for exposing said head to an obstacle in actual snag situations to give said weight the best opportunity to respond to intensely applied force from the line.

The applicant further submits that the designed operation of the hemisphere head allowed by said o-ring gives the weight of the office action a distinct advantage over the prior art in actual snag situations.

6. Citation - Obviousness of swivel in view of Adams as modified by Bennet and further in view of Stephenson.

Applicant's response - the applicant submits that the circumstance of line twist is an obvious result of the operation and design of the applicants invention and such was anticipated by the integral attachment of a swivel for the purpose of eliminating said twisting and if said attachments were omitted, a serious flaw of design and operation would have been committed. However, since such circumstances were anticipated, due to the design necessity of the spin, the applicant submits that the swivel is a necessary and integral part of the design, operation, and function as a whole. The applicant further submits that Adams teaches specifically away from spinning, as stated immediately adjacent median number 20 of the summary, and the use of attachment means other than the line is unnecessary and constitutes a redundancy of operation and design whereas the line attachment apparatus of the office action is crucial to designed operation with each of the two parts playing separate and important roles relating to snag-resistance and elimination of line twist imperative to achieving the final goal of snag-resistant operation on a horizontal plane allowing for fast steady retrieves

through stump and brush laden areas with said snag resistance, horizontal plane of operation, and fast retrieves being objects of the weight of the office action.

Fast, steady retrieves from long casts is stated in the abstract, and fast retrieves is stated in Objects and Advantages of the weight of the office action as is snag resistance and horizontal plane of operation.

7. Citation - in reference to claim 8, the use of the same materials used to make 6-inch nails is cited as obvious because the suitability of a material is based on its intended use.

Applicant's response - the statement of the use of the same material used to make 6-inch nails in claim 8 is one to further define the structure of the body of the weight.

8. Citation - Grimes shows a fishing rig with a weight and a swivel connecting the line to a hook.

Applicant's response - the field of the invention of the Grimes patent reads as follows,

The present invention relates to fishing apparatus and more particularly to a stop for use with fishing rigs with sliding weights.

The applicant submits that Grimes is non-analogous to the weight of the office action as the hole near the end of the weight and the swivel are responded to in citations 4 and 6, and the weight of the office action is attached at the end of the line.

Letter to Examiner Kurt Rowan
Art Unit 3643 for Patent Application 10/083/771
Filed by Huey Thomas Crochet 2/27/2002

Sir,

The figure 13 of the drawings of the Adams patent shows an all metal version of the Adams weight that is stated to be the same in dimensions and angles of curvature as the preferred embodiment with said angles and curvature being critical relative to balance for eliminating spinning when using the preferred embodiment. Such circumstance is described in the preferred embodiment of the Adams patent, median numbers 30 - 60, and particularly 30-35 and 55-60, and also the last paragraph of page 6 and continued on page 7. The applicant respectfully solicits reconsideration of the office action regarding Adams for the following reasons.

1. If any version of the Adams weight is attached by anything other than the line, a redundancy of design and operation has been committed since the Adams patent teaches emphatically away from spinning and has no critical advantage by the addition of unnecessary attachments. Median #20 of summary.

2. The Adams patent distinguishes over the prior art as being unitary and teaches expressly away from multiple parts in the prior art section in paragraphs 2 and 3.

3. As curvature and angle is applied to the preferred embodiment as critical to balance to eliminate spinning and the same critical curvature and angles are applied to the all metal version, and since Adams teaches specifically against spinning, and not once for spinning, the applicant submits that the all metal version also does not spin according to Adams and that attachment of anything other than the line is redundant of operation and superficial of design. Further Adams specifically states in the prior art that there is a need in the art for a substantially unitary fishing sinker.

Adams further states that as a result of being comprised of multiple parts, weights of the prior art often hang up in and around rocks, stumps and brush-laden areas.

Description of preferred embodiment page heading 4 to the right of median numbers 55-60 and prior art paragraph 2-3 median #20 of summary of invention.

REMARKS

The Adams patent teaches away from spinning while in use as stated immediately to the right of median number 20 in the summary of invention; therefore the applicant submits the operational application of a swivel to the weight of the office action is not obvious but necessary and, and to use a swivel with the weight of the Adams design would be redundant.

The applicant further submits that the Adams weight is extremely specialized, and not suited to a particular method of fishing commonly referred to as the tight-line method whereby a taut line must be achieved between the weight on the bottom and the end of the angler's rod. Such condition is maintained until the fish is hooked or steals the bait and the line is reeled in and such condition may last minutes or hours.

The condition of the Adams weight in water is made clear by the paragraph immediately adjacent median numbers 55 and 60 of the preferred embodiment on the page with the number heading 5 wherein it states that the buoyant portion is sufficient to provide an upward or lifting force to the top part of the sinker when it is in water, and that when pulled or jerked the sinker is lifted upward and forward. Such built in characteristics teach away from static weight performance, which is a requirement of the tight line method of fishing.

The applicant further submits that the weight of the office action is superior in this respect and that one of the objects and advantages of the weight of the office action is to provide static weight performance for the tight line method of fishing.

Signed Buey Thomas Crochet

Objects and Advantage - Corrected

- a. To provide a weight that can be used equally well by the majority of sports fisherman.
- b. To provide a product of sufficient static weight to allow for the tight-line method of fishing.
- c. To provide a weight with a horizontal, rather than vertical, mode of snag-resistant operation to allow for long casts and fast retrieves.
- d. To provide a weight with excellent snag resistant performance.
- e. To provide a weight incapable of spooking fish by purposely making sounds.

Dynamic Snag-resistant Fishing Weight

Abstract

The dynamic snag-resistant fishing weight is designed to perform as a static weight and also provide snag-resistant performance.

Said weight will greatly enhance the capabilities of the tight-line fisherman who wishes to fish in and around stumps and brush-laden areas.

Said weight is 6 inches long and one-quarter inch in diameter, weighting approximately one and one-half ounces.

A spin maneuver performed by said weight upon impact with obstacles is responsible for the snag-resistant performance. Said weight is of all metal construction and completely environmentally safe.

The horizontal plane of operation allows for fast, steady retrieves from long casts. This weight is used the same as an ordinary weight is used.

Request for amendment for
claims 9-10 of application 10/083/771
filed 2/27/02 by Huey Thomas Crochet
Examiner, Kurt Rowan Art Unit 3643

The applicant respectfully requests to amend one typing error in claim 9 and one typing error in claim 10 with each error consisting of one letter in one word which are different words in each claim. Said amended claims are attached hereto.

Signed Huey Thomas Crochet

Request for Claims Substitution

Regarding application 10/083/771 filed 2/27/2002 by Huey Thomas Crochet.

The applicant requests that claims 6 through 8 be cancelled and substituted by claims 9, 10 attached hereto.

The applicant further requests that the examiner write claims should the new claims prove unacceptable.

Thank You,

Signed Huey Thomas Crochet